

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DONNA M. DURGAN,

Plaintiff,

-v-

6:12-CV-279

MICHAEL J. ASTRUE, Commissioner of
Social Security,

Defendant.

APPEARANCES:

OF COUNSEL:

THE ANTONOWICZ GROUP
Attorney for Plaintiff
148 West Dominick Street
Rome, NY 13440

PETER W. ANTONOWICZ, ESQ.

HON. RICHARD S. HARTUNIAN
United States Attorney for the
Northern District of New York
Attorneys for Defendants
100 South Clinton Street
P.O. Box 7198
Syracuse, NY 13261

ANDREEA L. LECHLEITNER, ESQ.
Special Ass't United States Attorney

DAVID N. HURD
United States District Judge

DECISION and ORDER

Plaintiff Donna M. Durgan filed this action seeking judicial review of a final decision of the Commissioner of Social Security which denied her application for benefits under the Social Security Act. By Report-Recommendation dated February 19, 2013, the Honorable Christian F. Hummel, United States Magistrate Judge, recommended that Durgan's motion

for judgment on the pleadings be granted and the Commissioner's decision be vacated and remanded. No objections to the Report-Recommendation were filed.

Based upon a careful review of the Report-Recommendation and the entire file, it is found that Magistrate Judge Hummel's reasoning is sound and the Report-Recommendation will be accepted in whole. See 28 U.S.C. § 636(b)(1). It is noted however that the "Conclusion" section of the Report-Recommendation recommends that "[t]he Commissioner's decision finding disability be VACATED" Dkt. No. 17 at 23. However, in the substantive section of the Report-Recommendation discussing the issue of disability, Magistrate Judge Hummel determined that the Commissioner's conclusion that Durgan was able to perform the full range of medium work and thus was not disabled, was not supported by substantial evidence. As such, Magistrate Judge Hummel recommended that Durgan's motion for judgment on the pleadings be granted, the prior determination of no disability be vacated, and the case remanded for further consideration. Thus, it is clear that the conclusion stating that "[t]he Commissioner's decision finding disability be VACATED" is a typographical error. As such, the apparent error in the "Conclusion" section of the Report-Recommendation is rejected and the substantive finding of the Report-Recommendation is accepted and adopted.

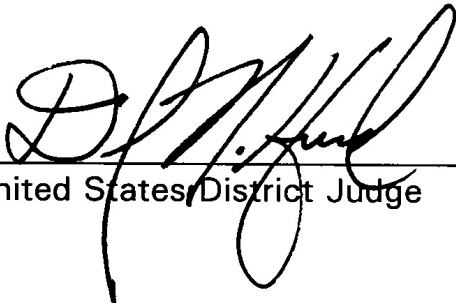
Accordingly, it is

ORDERED that

1. Plaintiff's motion judgment on the pleadings is GRANTED; and

2. The Commissioner's decision is VACATED and the matter REMANDED to the agency for further consideration consistent with the Report-Recommendation.

IT IS SO ORDERED.



United States District Judge

Dated: March 18, 2013
Utica, New York.